

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7645

Petition of Cross Pollination, Inc., for a certificate of)
public good, pursuant to 30 V.S.A. Section 248,)
authorizing the construction and operation of a 2.2 MW)
solar electric generation facility in the Town of New)
Haven, Vermont)

Hearing at
Montpelier, Vermont
February 17, 2011

Order entered: July 8, 2011

HEARING OFFICER: Mary Jo Krolewski

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John Madden, *pro se*

I. INTRODUCTION

This case involves a petition filed by Cross Pollination, Inc. ("Cross Pollination") requesting a Certificate of Public Good ("CPG") pursuant to 30 V.S.A. § 248, authorizing the

installation and operation of a 2.2 MW solar electric generation facility in New Haven, Vermont ("Project"). In this proposal for decision, I recommend that the Vermont Public Service Board ("Board") approve the proposed Project and issue a certificate of public good to Cross Pollination authorizing construction of the proposed Project.

II. PROCEDURAL HISTORY

On July 15, 2010, Cross Pollination filed a petition for a CPG, pursuant to 30 V.S.A. § 248, requesting approval to install and operate a 2.2 MW solar electric generation facility in the Town of New Haven, Vermont.

On September 2, 2010, the Hearing Officer held a prehearing conference at the Board's hearing room in Montpelier, Vermont.¹ John Madden, who owns property near the project site, was granted intervention at the prehearing conference.

On September 28, 2010, a site visit was held at the Project site in New Haven, Vermont, and a public hearing was held at the Town of New Haven Town Hall. Approximately 15 members of the public attended the public hearing. Several members of the public raised concerns with regard to the orderly development of the region, the economic benefit of the project, the costs to ratepayers, agriculture, wildlife, property values, aesthetics, and the effect of the soil and wind conditions in the area on the Project. The Board also received written public comments, including a letter signed by 13 neighbors of the Project that asked the Board to deny the petition. The letter expressed concerns regarding the Project's impacts on the quality of life in the area, property values, the community, aesthetics, and agriculture.

On October 28, 2010, in an Order on Motion to Intervene, the Hearing Officer granted intervention to the Agency of Agriculture, Food and Markets ("AAFM"), Addison County Regional Planning Commission ("ACRPC"), and the Town of New Haven, Vermont.

On January 5, 2011, Cross Pollination, the Vermont Department of Public Service ("Department"), the Vermont Agency of Natural Resources ("ANR"), AAFM, ACRPC, and the Town of New Haven filed a draft Stipulation and proposed findings of fact and order in which

1. The undersigned Hearing Officer has been assigned to replace the previous Hearing Officer, and has read the record in this proceeding.

the signature parties agreed that the Board should issue a CPG with conditions. In addition, Cross Pollination filed a Motion in Limine, and an Objection to Standing regarding Mr. Madden. Both motions were subsequently denied at the Technical Hearing held on February, 17, 2011.²

On January 14, 2011, Cross Pollination, the Department, ANR, AAFM, ACRPC, and the Town of New Haven filed a Stipulation and an amended proposed findings of fact and order in which the signature parties agreed that the Board should issue a CPG with conditions.

A technical hearing was held on February 17, 2011, in the Board's hearing room in Montpelier, Vermont. At the hearing, the prefilled testimony, exhibits, and stipulation were entered into evidence.

On February 22, 2011, Mr. Madden filed a brief.

On March 2, 2010, Cross Pollination filed a letter stating it would rest on its application and previous submissions.

On March 10, 2010, Cross Pollination filed an exhibit regarding a design for a transformer oil-containment pad. At the technical hearing, parties had stipulated to the admission of this exhibit into evidence.

III. FINDINGS

Based on the substantial evidence of record and the testimony presented at the hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

Background and Project Description

1. Cross Pollination is a duly organized Vermont corporation and a Vermont company as defined by 30 V.S.A. § 201, with its principal office located in Burlington, Vermont.

Petition at 1.

2. The Project is a 2.193 MW solar electric generation facility located on a 40-acre parcel of land on Route 7 in New Haven, Vermont. Lekstutis pf. at 13.

3. The Project property is currently agricultural land that has recently been the site of hay and corn cultivation. The Project will occupy approximately 40 acres of the 180-acre tract and

2. Tr. 2/17/11 at 40 (Bentley).

will be set back more than 250 feet from adjacent properties and approximately 250 feet from Route 7. Cross Pollination will also use the open areas within the solar field, and the remainder of its property, for the operation of a sustainable livestock farm. The open areas between the solar arrays will be used for grazing approximately 80 to 100 sheep. Lekstutis pf. at 13, 17–18; exh. 2 at LA1.1 and LA2.0; exh. 9.

4. The Project will not require any new paved roads. Access to the site will be through the property's existing gravel access drive off Route 7. The Project will use an unpaved access path for moving livestock throughout the property and accessing the solar arrays. During operation, such access will be minimal and primarily for agricultural purposes. Askew pf. at 9; Lekstutis pf. at 6.

5. The Project will include: (1) approximately 7,832 solar photovoltaic modules, 280 watts each, arranged in 178 arrays; (2) a metal mounting system to elevate the modules above the ground; (3) electrical lines in underground conduit connecting the modules to the inverters; (4) inverters; (5) transformers; and (6) electrical lines from the transformers to Green Mountain Power Corporation's ("GMP") distribution system. Lekstutis pf. at 4–5; exh. 27.

6. The proposed solar arrays will be attached to a fixed mounting system with sloping modules approximately 3 feet off the ground at the bottom of the array and approximately 10 feet off the ground at the top of the array. The proposed arrays will be grouped into 22 rows that extend across the site from east to west. Each row will be approximately 92 feet from the adjacent row. The photovoltaic panels will tilt 34 degrees towards solar south and will face away from Route 7. The mounting system's support poles will be driven into the ground without concrete foundations. The underground conduit connecting the arrays to the inverters will be installed at a maximum depth of 24 inches below grade. Lekstutis pf. at 4–5; exh. 2 at LA1.1 and LA2.0; exh. 27.

7. The Project will include four 500 kW inverter units, grouped in sets of two, that convert the DC current generated by the solar panels into AC current before it is sent to the distribution line. The inverters will be enclosed in two custom-fabricated structures that are designed to resemble Vermont sugar shacks, approximately 26 feet high by 29 feet wide by 39 feet long. Lekstutis pf. at 4–5; exh. 2.

8. The Project will include two 1,000 kVA three-phase medium-voltage step-up transformers located next to the inverter enclosures. The transformers will transform the 480-volt inverter output to 12.47 kV for interconnection to Green Mountain Power Corporation's ("GMP's") distribution system. The line carrying the output from the transformer will run underground to a GMP service pole located on Route 7. Askew pf. at 4; Lekstutis pf. at 4–5.

9. The Project will be secured within a six-foot-high multi-strand tensile fence around the perimeter of the forty-acre solar installation with two access gates, one gate on the northern perimeter and one gate on the southern perimeter. Lekstutis pf. at 8, 17; exh. 2.

10. The Project has a nameplate DC capacity of 2.193 MW and has an expected net energy output (after DC to AC conversion) of approximately 2,782 MWh per year. Lekstutis pf. at 4.

11. The Project's operation will be automated and remotely monitored with limited operational access for maintenance. There will be on-site personnel managing the farm operations. Tr. 2/17/11 at 27–28 (Lekstutis).

12. The Project is being developed under the Sustainably Priced Energy Enterprise Development ("SPEED") standard-offer program. A standard-offer for the Project contract has been signed with the SPEED Facilitator. The standard-offer contract provides for the sale of the Project output and other attributes, including renewable energy credits, at a fixed price of \$0.30 kWh for a period of 25 years. Lekstutis pf. at 4; Nelson pf. at 3; exhs. 12 and 13.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

13. The Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of the affected municipality. This finding is supported by findings 14 through 17, below.

14. The Project is compatible with nearby land uses, which includes residential, municipal, industrial, commercial, and agricultural uses. The Project will be located in an open meadow with an existing farmstead along Route 7, and will be integrated with more traditional agricultural uses of the property. Exh. 27 at 1; exhs. 4–8.

15. The Project is consistent with the New Haven Town Plan's energy policies to encourage renewable resources and its land conservation policies to promote the viability of agricultural uses. Kane pf. at 7; exh. 27 at 19–20.

16. The Project is consistent with the Addison County Regional Plan's policies to develop energy infrastructure and to support orderly growth of the region, including agricultural resources. Kane pf. at 7–8; exh. 27 at 20–21.

17. The Town of New Haven and the ACRPC have signed a Stipulation indicating that the Project, by retaining the undeveloped portion of the property in agriculture or as open space, is consistent with both the Addison Regional Plan and the Town of New Haven Plan. Exh. Joint-1 at 2.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

18. The Project is a qualifying SPEED facility and no part of the Project is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers. Nelson pf. at 3; exhs. 12 and 13.

Discussion

Pursuant to 30 V.S.A. § 8005(b)(8):

a demonstration of compliance with subdivision 248(b)(2) of this title, relating to establishing need for the facility, shall not be required if the facility is a SPEED resource and if no part of the facility is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers.

Accordingly, Cross Pollination does not need to demonstrate compliance with this criterion.

Under Board Rule 4.312(B):

At the time that the developer of a generation facility seeking to participate in the SPEED program applies for a certificate of public good under 30 V.S.A. § 248, the applicant shall also request a certification from the Board that the facility constitutes a SPEED project.

I recommend that the Board treat Cross Pollination's petition as a request for certification under Rule 4.312(B).³ I conclude that there is sufficient information for the Board to conclude that the proposed solar generation facility constitutes a SPEED project and I recommend that the Board certify the Project as a SPEED project.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

19. The Project will not have an adverse impact on system stability or reliability. This finding is supported by findings 20 through 22, below.

20. A System Impact Study was prepared for the Project in cooperation with GMP. The Project will not adversely affect system stability and reliability, provided that Cross Pollination performs the following additional analyses and upgrades that are recommended in the System Impact Study:

- a. A complete coordination study on the GMP distribution system and the Project generating system to allow proper setting of the generator relays and the distribution circuit reclosers and fusing;
- b. Conversion of the existing regulator settings to the co-generation mode;
- c. Installation of two, 500 kVA, 12,470 volt wye/480 volt delta transformers as generator step-up transformers;
- d. Installation of a three-phase, gang-operated switch and recloser to provide protection and a visual, lockable open point for line maintenance at the interconnection point;
- e. An inspection of the Project system by a State electrical inspector to assure compliance with the National Electrical Code; and
- f. The completion of the testing required by Institute of Electrical and Electronics Engineers ("IEEE") 1547, Section 5 as listed in Appendix D, with a written copy of the test results provided to GMP.

Askew pf. at 2; exh. 20.

21. Cross Pollination will pay all costs of any electrical system modifications required to interconnect the Project to the GMP distribution system. Askew pf. at 3–5; exh. 20.

22. Cross Pollination will develop and execute an Interconnection Agreement with GMP that will include operating terms and conditions. Askew pf. at 5.

3. Any party wishing to object to the treatment of Cross Pollination's petition as a request for certification should do so in its comments on this Proposal for Decision.

Discussion

In accordance with Board Rule 5.508(B), an interconnection agreement between GMP and Cross Pollination will be developed and executed. Accordingly, I recommend that the Board require that Cross Pollination, prior to operation of the Project, file with the Board and the Department a copy of the signed interconnection agreement.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

23. The Project will result in an economic benefit to the state and its residents. This finding is supported by findings 24 through 26, below.

24. The Project is anticipated to cost approximately \$7 to \$8 million, with annual operating costs of approximately \$50,000 to \$75,000. The Project will generate local and state property taxes that include annual combined property taxes of approximately \$40,000, and annual state income taxes of approximately \$40,000 to \$50,000, after the Vermont Business Solar Tax Credit carry-over is exhausted. Lekstutis pf. at 15–16.

25. The construction of the Project will include the use of in-state supplies, contractors, and consultants. Project construction will create approximately fifteen to twenty short-term construction jobs that will last approximately eighteen weeks. Lekstutis pf. at 15–17.

26. The operation of the Project will periodically employ several individuals to maintain and monitor the Project (e.g., washing the panels as necessary). Lekstutis pf. at 15–17; tr. 2/17/11 at 27–28 (Lekstutis).

Aesthetics, Historic Sites, Air and Water Purity, The Natural Environment and Public Health and Safety

[30 V.S.A. § 248(b)(5)]

27. The Project as proposed will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. This finding is supported by findings 28 through 102, below, which address the criteria specified in 10 V.S.A. §§ 1424(a)(d) and 6086(a)(1)–(8)(a) and (9)(k).

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

28. The Project will not have any undue adverse impacts on public health or safety. This finding is supported by findings 29 through 32, below.

29. The Project's inverters will be located in two Underwriters Laboratories-listed enclosures. The pad-mounted transformers will include lockable covers for utility access only. The Project and associated electrical equipment are designed to operate with remote monitoring and will conform with applicable building, fire, and electrical codes. The Project will be inspected by an electrical engineer before it is energized. Nelson pf. at 6; tr. 2/17/11 at 49 (Askew); exh. 18.

30. The entire solar facility will be enclosed by a perimeter fence with appropriate signs warning of electrical danger. Nelson pf. at 6; exh. 2 at LA1.1 and LA2.0.

31. The Project's solar photovoltaic panels will have an anti-reflective coating, in order to absorb rather than reflect the sun's energy. In addition, the panels will be oriented towards solar south and will not directly face traffic traveling along Route 7. Nelson pf. at 6; exh. 2 at LA1.1 and LA2.0; exhs.16–17.

32. The Project's array racking system is custom-designed to account for the specific conditions on-site and designed to withstand winds of approximately ninety miles per hour. Tr. 2/17/11 at 49–50 (Askew).

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

33. There are no outstanding resource waters in the Project area. Worden pf. at 3–4.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

34. The Project will not result in undue air pollution. This finding is supported by findings 35 through 40, below.

35. Dust generated from construction of the Project will be minimal and controlled through the application of water as needed. Worden pf. at 4.

36. The operation of the Project will not generate any air pollution emissions, including greenhouse gas emissions. The Project will not require an Air Pollution Control permit from ANR. Lekstutis pf. at 8; Worden pf. at 4.

37. Noise generated by the construction of the Project will be no louder than noise generated by typical farming and light construction equipment. Construction of the Project will occur between between 7:00 A.M. and 5:00 P.M. Lekstutis pf. at 6.

38. The Project's inverters, based on manufacturer specifications, will generate noise at a maximum of 65 decibels ("dBA") during the day at full power measured three meters from the inverter (midday). The manufacturers specifications do not account for the attenuation in sound levels that will occur due to the inverters being housed in buildings. The Project inverters will not generate any noise at night. Worden pf. at 4; Askew pf. at 7.

39. The expected sound level from the inverters during full operation would be: (a) less than 38.4 dBA at the closest property line (approximately 250 feet away); (b) less than 32.4 dBA at the closest adjacent residence property line (approximately 450 feet away); and (c) less than 29.4 dBA at the closest residence on the property (approximately 650 feet away). Askew pf. at 7–8.

40. The U.S. Environmental Protection Agency has issued a residential noise guideline of 55 dBA (equivalent to a continuous noise limit of 48.6 dBA) designed to protect public health and welfare. Askew pf. at 6.

Water Pollution

[10 V.S.A. § 6086(a)(1)]

41. The Project will not result in undue water pollution. This finding is supported by findings 42 through 44, below, and by the specific findings under the criteria of 10 V.S.A. §§ 6086(a)(1)(A) through (G), below.

42. The Project will not involve any discharges or injections into ground waters. No herbicides will be used to control vegetation growth. Worden pf. at 7.

43. The Project will not require an operational stormwater discharge permit. The Project will create approximately 2,400 square feet of new impervious surface, which is below the one-

acre permit threshold. The impervious surface includes the concrete pad for the two inverter buildings and transformers. Worden pf. at 6.

44. The Project includes the installation of two 1000 kVA step-up transformers mounted on concrete pads next to the inverter buildings. The two transformers, which will contain mineral oil or another on-toxic oil, will be located, respectively, approximately 100 feet and 200 feet of Class III wetlands. Askew pf. at 4; Worden pf. at 7; tr. 2/17/11 at 17–20 (Askew); exh. 2 at LA1.1; exh. 39.

Discussion

During the technical hearing, Cross Pollination's expert witness was unable to identify the amount of oil contained in each transformer.⁴ Based on similar solar generation projects approved by the Board, each transformer is likely to contain about 450 gallons of oil.⁵ Cross Pollination contended that oil containment for the Project's transformers was not required under IEEE standards or by other regulations, but provided a proposal for an oil-containment system that included a catch basin lined with a geotechnical fiber membrane that is capable of containing all of the mineral oil from a transformer in the event of a spill.⁶ Cross Pollination also indicated that the oil-containment system would not add much to the cost of the Project.⁷ During the technical hearing, both the Department and ANR did not take a position with regard to oil containment given Cross Pollination's uncertainty about the amount of oil contained in the transformers.⁸ Given the transformers proximity to Class III wetlands, I recommend that the Board include a condition in the CPG requiring Cross Pollination to install oil containment for each transformer.

4. Tr. 2/17/11 at 17–20 (Askew).

5. *Petition of Triland Partners*, Docket 7632, Order of 11/30/10, at 13.

6. Tr. 2/17/11 at 22 (Askew); exh. 39.

7. Tr. 2/17/11 at 23 (Hall).

8. Tr. 2/17/11 at 23 (Hofmann and Dillon).

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

45. The Project is not located in a headwaters area. Worden pf. at 6; exh. 34 at A.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

46. The Project will meet applicable Department of Health and Department of Environmental Conservation regulations for the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells. This finding is supported by findings 47 and 48, below.

47. The Project will not involve manufacturing or industrial process or the storage of oils, fuels, chemicals, cleaning fluids, solvents, batteries, pesticides, or other hazardous materials and will not involve any discharges, injections into ground waters or the use of herbicides to control vegetation. Worden pf. at 7.

48. The operation of the Project will not generate solid wastes. Any wastes generated during construction of the Project will be disposed of in accordance with Vermont solid waste management rules. Cross Pollination does not anticipate removing any trees for the Project, but if any are removed, the trees will be disposed on-site above groundwater level or removed from the site. Worden pf. at 7.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

49. The operation of the Project will not require a permanent water supply. Cross Pollination will truck in water as needed to clean the solar panels. Construction of the Project may require water for dust control and will either use the existing on-site water supply or truck in water as needed. Worden pf. at 6, 8, 11.

Floodways

[10 V.S.A. §§ 6086(a)(1)(D)]

50. The Project will not involve development within any floodways or floodway fringe areas. Worden pf. at 8; exh. 2 at LA1.1 and LA2.0; exhs. 34–36.

Streams

[10 V.S.A. §§ 6086(a)(1)(E)]

51. The Project will not have an undue adverse impact on any streams. This finding is supported by findings 52 through 54, below.

52. The Mud Creek runs through a small portion of the southern part of the Project's property. The solar arrays will be constructed approximately 2,000 feet north of the creek. Worden pf. at 8–9; Lekstutis pf. at 13; exh. 2 at LA1.1 and LA2.0; exhs. 34–36.

53. Construction of the Project will include the installation of silt fencing downslope of any earth disturbances and the seeding and mulching of any disturbed areas immediately following the disturbance. Worden pf. at 9.

54. The Project will not have the potential to cause fluvial erosion hazards. The Project will not withdraw any water from the creek. Worden pf. at 9.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

55. The Project is not located on a shoreline of a lake, pond, reservoir, or river. Worden pf. at 9; exh. 2 at LA1.1 and LA2.0; exhs. 34–36.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

56. The Project will have no undue or adverse impacts on wetlands. This finding is supported by findings 57 through 60, below.

57. There are no Class I or Class II wetlands located on the Project site. Gustafson pf. at 3; exh. 2 at LA1.1 and LA2.0; exh. 38.

58. There are eight Class III wetland areas located on the Project site, which have minimal functional significance and have been managed as hay and corn fields for more than fifty years. Gustafson pf. at 3; tr. of 2/17/11 at 19–20 (Gustafson); exh. 2 at LA1.1 and LA2.0; exh. 38.

59. The Project will maintain a fifty-foot buffer between the closest arrays and the Class III wetlands. Gustafson pf. at 3; Worden pf. at 10; exh. 2 at LA1.1 and LA2.0; exh. 38.

60. The Project will include a fence and path adjacent to the fence that will travel through approximately 65 feet of one of the Class III wetlands on the Project site. The path will be grassed, not gravel or paved, and will be used only for access to the solar arrays and livestock corral. The Project's impacts on the Class III wetland will be limited to 1,100 square feet which is below the Army Corps of Engineers' threshold for wetlands-impact permitting. Gustafson pf. at 3–4; exh. 2 at LA1.1 and LA2.0.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2), & (a)(3)]

61. The Project will not have an undue adverse impact on any existing water supply. The Project will require limited use of water during construction for dust suppression and during operation for solar panel cleaning. The Project will not require a permanent water supply and will truck in water as needed to clean the solar panels. Worden pf. at 6, 8 and 11.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

62. The Project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. This finding is supported by findings 63 through 67, below.

63. The Project site is moderately sloped (2 to 6%) and the soils in the area are Vergennes Clay and Covington and Panton Silty Clays. The soils have a high erosion rating. Worden pf. at 11; exh. 36.

64. The Project will not require grading or the removal of any trees or brush. The Project will involve trenching conduit and driving the solar array support structures into the ground. Lekstutis pf. at 12–13; Worden pf. at 12.

65. Construction of the Project will employ erosion-prevention measures including stabilizing the construction entrance, silt fencing, temporary and permanent seeding and mulching, sediment traps as necessary, and limiting concurrent disturbance to the extent practical. Erosion control measures will be checked weekly and after each rain event and, if necessary, will be repaired immediately. Worden pf. at 12; Lekstutis pf. at 7.

66. Winter construction of the Project is not anticipated, but if construction is undertaken between October 1 and April 14, the Project will comply with the State of Vermont winter erosion controls. Worden pf. at 12.

67. Prior to construction, Cross Pollination will apply for a Vermont Construction General Permit because the Project will potentially disturb more than one acre of soils during construction. Worden pf. at 12; tr. 2/17/11 at 34 (Worden).

Discussion

Cross Pollination will apply for a Vermont Construction General Permit because the Project will potentially disturb more than one acre of soils during construction. I recommend that Cross Pollination's compliance with the Construction General Permit and site-specific erosion present and sediment control plan be required as a condition to the CPG. In addition, I recommend that Cross Pollination be required to file with the Board a copy of the Construction General Permit issued by ANR.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

68. The Project will not cause unreasonable congestion or unsafe conditions with respect to use of highways, waterways, railways, airports and airways, and other means of transportation existing or proposed. This finding is supported by findings 69 through 72, below.

69. The Project will not require any new, permanent paved roads. Access to the site will be through the property's existing gravel access drive off Route 7. No changes to the existing access drive are anticipated to accommodate the Project. The existing access drive includes space for ten parked cars. Askew pf. at 9; Lekstutis pf. at 6.

70. The amount of construction-related vehicle traffic for the Project is expected to be less than 1,200 total vehicle trips to the site and delivery of less than 40 tractor-trailer loads of equipment spread over eighteen weeks. The amount of operation-related vehicle traffic for the Project is expected to be minimal. Askew pf. at 8; Lekstutis pf. at 17; tr. 2/17/11 at 29 (Askew).

71. The Project components will be delivered to the site via Route 7 and other state or local roads and will use standard road delivery methods. The deliveries are not expected to require

special permits (oversize/overweight loads) for transportation. Askew pf. at 8–9; tr. 2/17/11 at 29 (Askew).

72. Project-related vehicle trips should have no appreciable effect on daily traffic volume on Route 7, which in New Haven is currently over 7,000 vehicle trips per day. Askew pf. at 9; exh. 25.

Educational Services

[10 V.S.A. § 6086(a)(6)]

73. The Project will not cause any unreasonable burden on the ability of any municipality to provide educational services. The operation of the Project will periodically employ several individuals to maintain and monitor the Project and will not cause an unreasonable burden on educational services. Cross Pollination intends to provide schools with educational tours of the Project, and the Project's output and weather data will be available online. Nelson pf. at 4; Lekstutis pf. at 15–17; tr. 2/17/11 at 27–28 (Lekstutis).

Municipal Services

[10 V.S.A. § 6086(a)(7)]

74. The Project will not cause any unreasonable burden on the Town of New Haven to provide municipal services or governmental services. The Project will not require any municipal water or sewer, nor any unique fire, police or rescue services, and will be installed to conform to applicable building, fire, and electrical codes. Cross Pollination will provide access keys for the solar arrays and inverter buildings to the local fire and emergency services. In addition, Cross Pollination will install lockable disconnect switches on the exterior of the building to allow emergency disconnection of the inverter building and solar arrays from the electrical power supply in the event of an emergency. Nelson pf. at 4–5.

**Aesthetics, Historic Sites
and Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

75. The Project will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 76 through 94, below.

76. The Project will be located on a largely open meadow with an existing farmstead that occupies the northern extent of the property. The property is bounded on the west by the Town of Waltham town line and the east by Route 7, with nearly 600 feet of frontage along Route 7. Exh. 27 at 1.

77. The Project will be located away from Route 7, with the closest array at nearly 310 feet away from Route 7. The nearest residential structure to the solar field is 750 feet away. The Project will avoid any clearing of the pocket of existing woods located on the western edge of the property. Exh. 2 at LA1.1. and LA2.0; exh. 27 at 16.

78. The viewshed of the Project will be small and variable. Views of the Project from the south are more likely, while views to the north, east, and west are limited by distance, vegetation, and existing structures. Kane pf. at 6; exh. 27.

79. The extent and scale of the potential viewshed is limited. Only a few private residences are potentially impacted and the only public area with any significant visual impact is Route 7. The Project will be difficult to see or discern from distances greater than one mile. The elements that comprise the Project are not excessively tall and the landscape is broad and relatively flat in the immediate vicinity of the Project. The arrays are over 300 feet away from the traveling public. Exh. 27 at 12.

80. The typical viewer of the Project landscape will be moving. The duration of views for travelers heading south on Route 7 will be less than one minute. Exh. 27 at 12–13 and Figure 11.

81. The small hills that dominate the eastern portion of the Town of Waltham are west of Route 7 and are the most distinctive topographic feature in the immediate landscape. As the Project will be relatively low and is placed north of the drainage/wetland area that bisects the

site, the Project will not distract from the contribution these hills make to the scenic resource. Exh. 27 at 13 and Figure 10.

82. The dark blue-tinged surface of the proposed arrays is inherently absorptive of natural light and when coupled with the anti-glare coating applied to the photovoltaic modules, is generally considered non-reflective. The use of fixed arrays with a solar south orientation will place the non-reflective surfaces of the panels away from Route 7 and the few adjacent residences to the east. The only potential for reflectivity of the arrays will occur during short durations during late evening in summer months when the sun is low and positioned strongly to the west. During these late evening hours the combination of low solar intensity and the light-absorption qualities and anti-reflective coatings of the modules will not create a reflectivity that is offensive to the traveling public. Exh. 27 at 1, 13, 15–16.

83. The property will continue to appear as a working, agricultural landscape. The existing historic barn complex will remain and the agricultural activities will continue and expand, including the grazing of livestock. The Project will use an agriculturally-themed design for fencing and gates, and inverter buildings. The open grass land between the array rows will be utilized to graze sheep and for hay production to support beef and sheep herds during the winter months. Lekstutis pf. at 8; exh. 2 at LA1.2; exh. 27 at 13, 16.

84. All electrical and data connection from the proposed solar arrays to the inverter buildings will be underground. All electrical connections from the inverter building to GMP's distribution poles located along Route 7 will be placed underground. Exh. 27 at 16.

85. The Project will not require any lighting. Exh. 27 at 16.

86. Under the terms of the Stipulation, Cross Pollination will implement a landscaping plan that will provide screening of the Project on the south side of the solar enclosure to the east of an existing Class III wetland, and on the east side of the entire parcel along Route 7. The south-side screening will include a hedgerow planting and the east-side screening will include either: (1) an agricultural crop (e.g., sunflowers, corn, or hops) or fruit trees; or (2) if the agricultural use of the land between the solar corral and Route 7 proves impractical, clusters of native-species trees. Exh. Joint-1 at 4; exh. 2 at LA.1.0, LA1.1, and LA2.0; exh. 27 at 16.

87. While visible from portions of Route 7, the Project will not be a dominant element in the landscape, but rather, will be seen as a land use consistent with agricultural uses that dominate the region. The relatively low profile of the Project with respect to the land allows existing hedgerows and trees within the property to function well for screening, particularly to areas west of the Project. Significant buffers between neighboring properties and public rights-of-way are provided, with the actual solar field a minimum of 300 feet from potential viewers. Kane pf. at 6; exh. 27.

88. Prior to final selection of the proposed fixed array layout, Cross Pollination was considering a tracking array design for the energy production benefits. The tracking array would have occupied a greater extent of the property and would have resulted in taller panels. The fixed array design both reduces the height of the arrays and moves them out of the direct foreground views from the nearby residences along Route 7. Exh. 27 at 15–16.

89. The Project does not violate clear written community standards that are designed to protect the aesthetics or scenic beauty of the area. The Project is consistent with the objectives and goals of the New Haven Town Plan and the Addison County Regional Plan to encourage renewable energy projects, protect scenic qualities, and preserve agricultural land uses. Kane pf. at 6–8; exh. 27 at 13–15; exh. 29; exh. 30.

90. Cross Pollination has taken a variety of steps to minimize and mitigate potential aesthetic impacts, including screening and setbacks, the expansion of the use of the property for diverse agricultural production, use of context-appropriate design for inverter structures, fences and gates, the addition of shrubs and trees to create new hedgerow to screen the Project at the southern edge of the solar array, and the use of underground Project-related power lines within the property. Kane pf. at 6.

91. The Project will not result in an undue adverse impact to the aesthetic and scenic beauty of the area for the following reasons: (1) the Project will not be shocking or offensive to the average person due to the limited and variable views from surrounding vantage points; (2) the Project does not violate any clearly written community standard; and (3) Cross Pollination has taken reasonably available mitigation steps to reduce the Project's aesthetic impacts, including implementing a landscaping plan that will screen the Project. Kane pf. at 6; exh. 27 at 12–17.

92. The Project will not have an undue adverse impact on historic or archaeological resources. The Project will avoid the use of an archaeologically sensitive area identified at the southern and eastern portion of the property and will not alter any historic structures associated with the property farmstead. Kane pf. at 4–5; exh. 27 at 18.

93. The Vermont Division for Historic Preservation concluded that the Project will have no adverse effect on historic sites that are listed on or eligible for the State Register of Historic Places. Exh. 40.

94. The Project will not have an undue adverse effect on any rare and irreplaceable natural areas. The Project is located on an open field and according to ANR's database there are no rare or irreplaceable natural areas on the site. Worden pf. at 13; exh. 34.

Discussion

Based on the above findings, I find that the proposed project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, I have relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. *Quechee Lakes Corporation*, #3W04 1 1-EB and 3W0439-EB, dated January 13, 1986.

As required by this decision, it is first appropriate to determine if the impact of the project will be adverse. The project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine whether such an impact would be "undue." Such a finding would be required if the project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if generally available mitigating steps will not be taken to improve the harmony of the project with its surroundings, or if it would offend the sensibilities of the average person. The Board's assessment of whether a

particular project will have an "undue" adverse effect based on these three standards will be significantly informed by the overall societal benefits of the project.⁹

In a February 22, 2011, filing, Mr. Madden states his opposition to the Project and appears to make the argument that the Project does not satisfy the Quechee test. Mr. Madden's filing refers to two steps of the Quechee test – whether the Project's impacts are shocking or offensive, and whether the Project violates a clearly written community standard – and includes a compilation of statements addressing the town plan, cites Vermont rules and statutes, and provides copies of letters and newspaper articles raising concerns about the Project.¹⁰ Mr. Madden provides no cogent argument or evidence of why the Project does satisfy the Quechee test.

Given the facts of this case, it would be difficult to find that the proposed solar project will not have an adverse effect on the aesthetics of the area. The proposed project will cover approximately 40 acres of land with solar panels that will be incompatible with their surroundings, and travelers along Route 7 will have extended views of the solar panels. No party disputes that the Project would have an adverse impact.

Under the Quechee test, in evaluating whether the proposed project's adverse aesthetic impact would be undue, the first step is to determine whether the project violates a clear, written community standard. I conclude that the applicable Regional and Town Plans contain no clear, written community standards with which the Project would be inconsistent. In order for a provision to be considered a clear, written community standard, it must be "intended to preserve the aesthetics or scenic beauty of the area" where the proposed project is located and must apply to specific resources in the proposed project area.¹¹ The language of the New Haven Town and Addison County Regional plans is general in nature and seeks to promote good stewardship of scenic resources without identifying specific actionable standards.¹² Furthermore, the

9. *In re: Northwest Vt. Reliability Project*, Docket 6860, Order of 11/28/05 at 80; *Northern Loop Project*, Docket 6792, Order of 7/17/03 at 28; *Petition of UPC Vermont Wind, LLC*, Docket 7156, Order of 8/8/07 at 65.

10. Madden Brief at 1–11.

11. *In re Halnon*, NM-25, Order of 3/15/01 at 22.

12. Kane pf. at 6–8; exh. 27 at 13–15; exh. 29; exh. 30. Also, Mr. Madden has not identified any provisions of the plans that would qualify as written community standards and that would be violated by the Project.

agricultural component of the Project enhances its consistency with local and regional plans and objectives.

The second step in evaluating whether the Project would have an undue adverse aesthetic impact is to determine whether Cross Pollination has taken generally available steps to mitigate the impact of the Project and improve the harmony of the project with its surroundings. The record is clear that Cross Pollination has taken steps to minimize the aesthetic impact of the Project, including: (1) a fixed array design, rather than a tracking array, reducing the height of the array and views from nearby residences; (2) avoidance of any clearing of the existing woods located at the edge of the property; (3) use of context-appropriate design for inverter structures, fences, and gates; (4) use of underground Project-related power lines within the property; and (5) a landscaping plan, agreed upon by parties signing the Stipulation, reducing visibility of the Project.

The final step in evaluating whether the Project would have an undue adverse aesthetic impact is to determine whether the Project would be shocking or offensive to the average person. While the Project will be visible, it will not dominate the landscape and will not offend the sensibilities of the average person. Cross Pollination has taken steps to integrate renewable energy generation with an operating farm landscape. Based upon the applicable law and the facts presented in this case, I conclude that the Project will not result in an undue adverse effect on aesthetics or on the scenic or natural beauty of the project area.

Under the Stipulation, Cross Pollination has agreed to implement a landscaping plan to screen or otherwise mitigate the impact of the Project at various locations. I recommend the Board reserve the right, including at the request of the parties, to undertake a post-construction review of these measures to address any unexpected visual impact. In addition, I recommend that the Board include a condition in the CPG providing that the Board may require Cross Pollination to implement additional mitigation measures if the Board finds the mitigation measures as installed to be inadequate.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

95. The Project will not have an undue, adverse impact on any necessary wildlife habitat and endangered species. This finding is supported by findings 96 through 99, below.

96. The Project property is currently agricultural land that has recently been the site of hay and corn cultivation. Lekstutis pf. at 3.

97. There are no known listed threatened or endangered species at the Project site, nor is there any necessary wildlife habitat. Exh. 34.

98. ANR's database indicates that the summer range of the Indiana Bat, a State and Federal endangered species, includes New Haven. The primary habitat for the bat consists of forests and caves. The Project site includes approximately seventeen acres of forest along the western property line. At its closest point, the Project will be located 400 feet from the forest. Worden pf. at 12–13.

99. Cross Pollination does not expect to remove any trees for the construction of the Project and the Project will not result in much additional human activity on the site. The Project is not expected to impact the potential bat habitat. Worden pf. at 7, 12–13.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

100. The Project will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of the public's use or enjoyment of, or access to, such facilities, services, or lands. This finding is supported by findings 101 and 102, below.

101. The closest public investment to the Project will be Route 7. The Project site will be set back 250 feet from the highway, outside of the highway right of way, and will have no appreciable impact on existing traffic. Nelson pf. at 5.

102. The Project site currently includes a Vermont Association of Snow Travelers ("VAST") trail within the area where the arrays will be installed. Cross Pollination has signed an agreement

with VAST to allow the relocation of the trail after Project construction so that snowmobilers will have continued use of the trail. Tr. 2/17/11 at 30 (Lekstutis).

Least Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

103. Cross Pollination is not a distribution utility and is not required to have an integrated resource plan. Nelson pf. at 6.

Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

104. The Project complies with the *Vermont Twenty-Year Electric Plan*, because it supports the Plan's recommendations that the State should evaluate "financial incentive mechanisms to foster renewable energy deployment," and "other creative solutions to promoting the commercialization and use of clean, renewable technologies." The Project will promote the Plan's goals to diversify supply resources, maintain appropriate contribution from renewable resources, and reduce Vermont's dependence on fossil fuels and other resources that are subject to dramatic price changes and possible supply disruptions. Lekstutis pf. at 19–21.

105. The Department filed a determination on February 23, 2011, that the Project is consistent with the *Vermont Twenty-Year Electric Plan*, in accordance with 30 V.S.A. § 202(f). February 23, 2011, letter from Sarah Hofmann, Esq., Department of Public Service, to Susan Hudson, Clerk of the Board.

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

106. There are no outstanding resource waters in the Project area. Worden pf. at 3–4.

Waste-to-Energy Facility

[30 V.S.A. § 248(b)(9)]

107. The Project does not involve a waste-to-energy facility.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

108. The Project can be served economically by existing transmission facilities without undue adverse impacts on Vermont utilities and customers. The Project will interconnect with GMP's existing 12.47 kV distribution line located on Route 7 and will not adversely affect system stability or reliability. Cross Pollination will pay for any electrical system modifications required to interconnect the Project to GMP's distribution system. Askew pf. at 11–12.

Decommissioning Fund

109. The Project will be decommissioned at the end of its useful life. The solar modules will be removed from the site and sold for reuse or recycled. The solar panel support structures, underground electrical wiring, and inverters will be removed from the site and recycled. The transformers will be removed from the site and sold for reuse or recycled. The inverter buildings and fencing will be evaluated for reuse by the farming operation, and if the inverter buildings and fencing will not be reused, they will be removed from the site. Lekstutis pf. at 9.

110. The estimated cost of decommissioning the Project in present day dollars is \$85,000, including \$7,500 for the restoration of primary agricultural soils impacted by the Project. Exh. 41.

111. Under the terms of the Stipulation, Cross Pollination has agreed to the creation of a decommissioning fund that includes the following provisions:

- a. The Decommissioning Fund will be established with an A-rated financial institution. The Board will be named as the beneficiary of the Fund. The Fund will be managed by an independent third-party escrow agent and Cross Pollination shall have no control over the escrow fund or the actions of the escrow agent;
- b. The Fund will have sufficient funds to cover the estimated cost of decommissioning. Cross Pollination will provide the Board with documentation demonstrating that it has established the Fund and appointed an independent escrow agent;
- c. The Fund will be adjusted annually for inflation using the current annual Consumer Price Index ("CPI") for all urban consumers in the Northeast as determined by the Bureau of Labor Statistics. The Fund will not be revised downward if the annual CPI indicates a negative value. Cross Pollination will file annual reports with the Board and Department on the status of the Fund after each adjustment for inflation; and

d. In the event Cross Pollination is unable or unwilling to perform the decommissioning for any reason, the Board will have the right to access all monies in the Fund to pay for the cost of decommissioning, with any remaining Funds returned to Cross Pollination.

Exhs. Joint-1 at 6–7 and 41.

Discussion

Board Rule 5.402(C)(2) requires non-utility petitioners to "include a plan for decommissioning the project at the end of its useful life. This requirement does not apply to proposed generation facilities with a capacity of one MW or less."

Cross Pollination agrees to decommission the Project at the end of the Project's useful life. Cross Pollination estimates that decommissioning the Project will cost approximately \$85,000. Cross Pollination proposes to establish an escrow account with an A-rated financial institution with a third party escrow agent and name the Board as a beneficiary of the Fund.

In previous Board approvals, the Board has approved plans for decommissioning that include: (1) a detailed plan for decommissioning the proposed project and an estimate of the decommissioning costs; and (2) a plan for the creation of a Decommissioning Fund. Cross Pollination has provided a detailed plan for decommissioning the Project and a detailed estimate of the decommissioning costs. I recommend that the Board approve this portion of the Project decommissioning plan and require that the Project be decommissioned at the end of its useful life.

With regard to the creation of a Fund, under the terms of the Stipulation, Cross Pollination proposes to provide the Board with documentation demonstrating that it has established a decommissioning fund and appointed an independent escrow agent. In previous Board approvals, the Board has required that the Fund be bankruptcy remote in order to protect it from creditor claims in the event the proposed project encounters financial difficulties. In addition, the Board has requested that a petitioner seeking to obtain Board approval for an escrow fund file a decommissioning plan that includes operative documents for any proposed escrow account, detailed information regarding such an escrow account (including identifying information and the instructions to the third-party escrow agent), and a legal opinion from a

bankruptcy attorney regarding the bankruptcy-remoteness of the proposed escrow account.¹³ I recommend that the Board require Cross Pollination to file this additional documentation before approving Cross Pollination's decommissioning plan to establish a Fund with an escrow account. I also recommend that parties be given one week, from the date the plan is filed with the Board, to file any comments.

Under the terms of the Stipulation, Cross Pollination agrees to establish the decommissioning fund upon commencement of commercial operations of the Project. A decommissioning fund ensures that there are sufficient funds available to return the proposed project site to an appropriate condition at the end of the project's useful life or earlier, should the project cease or reduce operations for any reasons or if the project is never completed. In previous Board approvals, the Board required the fund to be in place at the start of construction, since the majority impacts to the site occur during the construction phase rather than the operation phase.¹⁴ Consistent with other approved merchant generation projects, I recommend that the Board require Cross Pollination, prior to proceeding with the construction of the Project, to have a decommissioning fund in place.

Under the terms of the Stipulation, Cross Pollination has agreed to protect and preserve the primary agricultural soils at the Project site, including: (1) maintaining open field characteristics and agricultural potential at the site by brush-hogging at least every two years or otherwise maintaining soils in agricultural production; (2) following decommissioning, restoring all the prime agricultural soils on the project site; and (3) allocating a minimum of \$7,500 of the Project's decommissioning fund to the restoration of prime agricultural soils. It appears that a separate decommissioning fund preserving primary agricultural soils is not necessary. I recommend that the Board not require a separate decommissioning fund for such activities, although Cross Pollination may elect to create one if it chooses.

13. *Petition of EOS Ventures*, Docket 7618, Order of 5/5/11 at 4.

14. *Petition of Triland Partners*, Docket 7632, Order of 11/30/10 at 31–32; *Petition of Chittenden County Solar Partners*, Docket 7611, Order of 9/15/10 at 28–29; *Petition of EOS Ventures*, Docket 7618, Order of 9/8/10 at 25.

IV. DISCUSSION

Cross Pollination, Inc. has provided sufficient evidence to demonstrate that the Project complies with Section 248 criteria. I recommend that the Board issue a CPG, with conditions, authorizing the construction of the Project.

On January 14, 2011, Cross Pollination filed a stipulation in which all the parties, with the exception of Mr. Madden, agreed that the Board should issue a CPG. Because not all of the parties to this proceeding have waived their rights under 3 V.S.A. § 811 to file written comments or present oral argument with respect to this Proposal for Decision, I am circulating the Proposal for Decision to the Parties for their review and comment.

V. CONCLUSION

Based upon the evidence in the record, I conclude that the proposed project, with the conditions identified below:

- (a) will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, and the recommendations of the municipal legislative bodies;
- (b) is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and land management measures;
- (c) will not adversely affect system stability and reliability;
- (d) will result in an economic benefit to the state and its residents;
- (e) will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and §§ 6086(a)(1) through (8) and (9)(K);
- (f) is consistent with the principles of least-cost integrated resource planning;
- (g) is in compliance with the electric energy plan under 30 V.S.A. § 202;
- (h) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Water Resources Board;
- (i) does not involve a waste-to-energy facility; and

(j) can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

I recommend that the Board approve the proposed Project and issue a CPG for construction of the proposed Project with the conditions set forth in the proposed Order and CPG below.

DATED at Montpelier, Vermont this 8th day of July, 2011.

s/Mary Jo Krolewski

Mary Jo Krolewski - Utilities Analyst
Hearing Officer

VI. BOARD DISCUSSION

After reviewing the comments on the Proposal for Decision ("PFD"), we adopt the Hearing Officer's PFD for the reasons set forth below.

On June 27, 2011, Mr. Madden filed a letter restating his opposition to the Project.¹⁵ Mr. Madden contends that the Project is not consistent with the scenic, historic, and rural resources in New Haven. Mr. Madden further notes that the Project farmstead is listed on the state Register of Historic Places. Mr. Madden's comments consist largely of a compilation of copies of diverse materials, including letters to editors and excerpts from the New Haven Town Plan.

The Hearing Officer's proposal for decision explains, at Findings 75 through 94 and the discussion that follows those findings, why the project will not have an undue adverse impact on aesthetics or historic sites. Mr. Madden's comments do not specify any alleged errors in the Hearing Officer's findings or discussion, and instead only present generalized statements and a collection of documents without any demonstration of error by the Hearing Officer. We are unpersuaded by Mr. Madden's arguments and adopt the Hearing Officer's conclusions that the Project will not result in an undue adverse effect on aesthetics or on the scenic or natural beauty of the project area.

In his June 27 filing, Mr. Madden states that he was unable to prepare additional comments on the PFD because he was unable to locate on the Board website previous Board Orders cited in the PFD and did not have a copy of the technical hearing transcript.¹⁶ Mr. Madden did not request an extension of time to file comments on the PFD, but did request additional informational materials. In his June 27 filing, Mr. Madden also questions whether the Hearing Officer, with the title Utilities Analyst, has the "appropriate perspective" to make scenic and historic considerations under 30 V.S.A. § 248(b)(5) and 10 V.S.A. § 6086(a)(8).

As an intervenor in this case, Mr. Madden has the same rights and obligations as the other formal parties, including the requirement that parties comply with the Board's procedural requirements. Mr. Madden had opportunity to request additional information or an extension of time to comment before the PFD comment deadline. We further note that Board website

15. No other party filed comments on the PFD.

16. Mr. Madden participated in the February 17, 2011, technical hearing.

homepage clearly states that individuals having trouble finding information should contact the Clerk of the Board. We do not grant Mr. Madden additional time for submitting comments.

With regard to Mr. Madden's concerns about the qualifications of the Hearing Officer, pursuant to 30 V.S.A. § 8, the Board is authorized to appoint a Hearing Officer for this proceeding. As such, the Hearing Officer is qualified to report her findings of fact in writing to the Board in the form of a proposal for decision. Pursuant to the provisions of 3 V.S.A. § 811, if any party believes that a Hearing Officer's proposed decision is not supported by the record evidence or applicable law, that party has the opportunity to present its concerns to the Board in its comments on the proposal for decision, an opportunity that has been afforded to Mr. Madden in this proceeding.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.
2. The proposed construction and operation of a 2.2 MW solar electric generation facility in New Haven, Vermont ("the Project"), will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good to that effect shall be issued.
3. Construction, operation, and maintenance of the Project shall be in accordance with the plans and evidence as submitted in these proceedings. Any material deviation from these plans must be approved by the Board.
4. Prior to proceeding with construction, Cross Pollination, Inc. ("Cross Pollination"), shall obtain all necessary permits and approvals. Construction, operation, and maintenance of the Project shall be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Vermont Agency of Natural Resources.
5. The Project is certified as a Sustainably Priced Energy Enterprise Development project.

6. Prior to commencement of operations, Cross Pollination shall file with the Board and the Vermont Department of Public Service a copy of a signed interconnection agreement between Green Mountain Power Corporation and Cross Pollination.

7. Cross Pollination shall pay for the entire cost of the distribution upgrades.

8. Cross Pollination shall implement the system protection and control strategies recommended by the System Impact Study for the Project.

9. Cross Pollination shall install an oil-containment system for each Project transformer.

10. Prior to the commencement of construction, Cross Pollination shall file with the Board a copy of the Construction General Permit issued by the Vermont Agency of Natural Resources.

11. All construction activities shall comply with the Construction General Permit issued by the Vermont Agency of Natural Resources.

12. All construction activities shall comply with the site-specific Erosion Prevention and Sediment Control Plan developed for the Project.

13. The Project shall be decommissioned at the end of its useful life.

14. Prior to commencement of construction, Cross Pollination shall submit to the Board for review and approval a plan for the creation of a decommissioning fund ("the Fund") that includes: (1) assurance that the Fund is backed by an appropriate A-rated financial institution and be managed by an independent third-party escrow agent; (2) assurance that the Fund be adjusted annually for inflation using the current annual Consumer Price Index as determined by the Bureau of Labor Statistics; and (3) the assurance that the Fund is bankruptcy remote in order to protect it from creditor claims in the event the proposed project encounters financial difficulties. Parties shall have one week from the date the plan is filed with the Board to file any comments.

15. The Board reserves the right to review, including at the request of a party, the effectiveness of the aesthetic mitigation measures, as installed. As a result of any such review, the Board may require Cross Pollination to install additional mitigation measures.

Dated at Montpelier, Vermont, this 8th day of July, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 8, 2011

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.